

and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application, in accordance with 37 C.F.R. § 1.78(a)(2). Claims for priority not made within the time mandated by § 1.78(a)(2), the Office Action states, will only be accepted if accompanied by a grantable petition to accept an unintentionally delayed claim for priority.

The USPTO final rule (“Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications.” *Federal Register* Vol. 66, No. 249, pp67087-67096) dictates that if an applicant includes a claim of priority to a prior-filed provisional application in the Applicant’s oath, within the time period set forth in 37 C.F.R. § 1.78(a)(5), but not in the manner specified therein (i.e. reference to prior-filed application not made in the first sentence of the application following the title), the Office will not require a petition to correct the claim if the claim for priority was recognized by the Office as shown by its inclusion on a filing receipt (*see Federal Register* at 67090). Similarly, if a claim of priority to an international application designating the United States is made in Applicants’ Declaration within the time period specified in 37 C.F.R. §1.78(a)(2), but not in the manner described therein, and is evidenced by a USPTO filing receipt, a petition is not required (*see Federal Register* at 67089).

Applicants submit that a valid claim for priority to both PCT/US99/17931 and U.S. provisional application 60/096,638 was made in Applicants’ Declaration and Power of Attorney under 37 C.F.R. § 1.63. Moreover, Applicants’ claim of priority was acknowledged by the U.S.P.T.O. in the Filing Receipt corresponding to the instant application, which was mailed on September 24, 2001 (copy enclosed). As such, Applicants respectfully assert that a petition to accept an unintentionally delayed claim for priority is not appropriate in the instant case. Therefore, Applicants respectfully request that the amendment to the specification to add priority data to the first sentence after the title be entered without a petition.

Abstract

The application is objected to for not containing an abstract of the disclosure as required by 37 CFR § 1.72(b). Applicants respectfully traverse.

Applicants assert that an abstract of the disclosure was submitted in parent case PCT/US99/17931, as evidenced by its inclusion in the published version of the PCT application (WO 00/09157, copy of first page enclosed). *See also* copy of page 17 of the application as filed, submitted herewith. As such, no new matter has been added to the present case.

Thus, it is respectfully requested that this objection be withdrawn.

Rejection under 35 U.S.C. § 112, Paragraph 1

Claim 11 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make or use the claimed invention. Applicants respectfully traverse.

Applicants disagree with the rejection, but nonetheless submit that the rejection is moot. To expedite prosecution of the instant case, Claim 11 has been canceled without prejudice to the refiling of same in a later filed application.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the instant rejection.

Rejection under 35 U.S.C. § 112, Paragraph 2

Claim 11 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse.

Applicants disagree with the rejection, but nonetheless submit that the rejection is moot. To expedite prosecution of the instant case, Claim 11 has been canceled without prejudice to the refiling of same in a later filed application.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the instant rejection.

Summary

Applicants respectfully submit that all outstanding rejections have been overcome by the amendments herein and remarks above. Accordingly, Applicants maintain all claims are in condition for allowance and a favorable action on the merits is earnestly solicited.

Respectfully submitted,

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Date: April 25, 2002